

OLC 78-0399/94

14 July 1978

MEMORANDUM FOR THE RECORD

SUBJECT: 11 July 1978 Intelligence Charter Hearing

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1. On 11 July 1978, [] OGC, and the undersigned attended another of the continuing open session hearings held by the Senate Select Committee on Intelligence (SSCI) on S. 2525, the intelligence charter legislation. The following individuals testified:

- Louis W. Schneider, Executive Secretary, "American Friends Service Committee";
- Ethel Taylor, representing the "Women Strike for Peace"; and
- Richard Gutman, Director and General Counsel, "Chicago Political Surveillance Litigation and Education Project."

Note: A brief description of each of these organizations is provided in an attachment hereto. Each of these organizations was billed as "victims of past intelligence abuses."

2. In terms of Senators present to hear testimony, this session was the most poorly attended. Only Senator Jake Garn (R., Utah) was present. Senator Birch Bayh (D., Ind.) did make an appearance after the witnesses had already made their statements. Consequently, he was unable to meaningfully question the witnesses to elicit further their viewpoints for the record.

3. Mr. Schneider, in his testimony on behalf of the American Friends Service Committee (hereinafter AFSC) made the following points:

- Mr. Schneider stressed that AFSC supports the letter and spirit of the First Amendment with regard to openness and freedom, and is therefore opposed to the continuation of "either secret or overt local, state and federal police activity which undermines and cancels the freedoms which under law they should logically protect";

--Mr. Schneider stated that in April 1976, AFSC issued a statement calling for the abolition of the CIA and the Internal Security Division of the FBI; there was nothing in AFSC's statement and subsequent testimony under questioning to indicate a departure from this stated "solution";

--Quoting from the 1976 AFSC statement mentioned immediately above (a full copy of which is attached), Mr. Schneider underscored the following points:

"The repeated violations of these [CIA and ISD of the FBI] agencies have so unmistakably compromised these two bodies that it is certain that they are beyond salvage as agencies in which Americans can confidently place their trust. Unless strong action is taken, there will always be the fear that they will again, under the cover of secrecy, resort to the kind of improper and illegal methods that have indelibly tarnished their names at home and abroad." (emphasis added)

Mr. Schneider continued:

"Believing in the Quaker ideal of an open society in which we are all free to promote peace, equality and justice without fear, the [AFSC] unhesitatingly adds its voice to those which say that the CIA and [ISD] of the FBI must be abolished." (emphasis added)

--Mr. Schneider stressed that any attempts to reform the intelligence agencies is fraught with "inherent pitfalls" and emphasized the fact that it is AFSC's position that the agencies of the intelligence community are "totally discredited, that their operations have done little if anything to further national security, and that legislative guidelines will be interpreted as to be virtually meaningless";

--Mr. Schneider indicated that, in the opinion of AFSC after review of S. 2525, the proposed charter would "make AFSC and organizations engaged in similar work the legitimate targets of government surveillance";

--Mr. Schneider said that FBI and CIA abuses should not be blamed on particular individuals, but on what he called "the organic and insidious growth of a bureaucratic mentality that has ultimately lost respect for the spirit and letter of the Constitution and is at war with the American people" (emphasis added);

--Mr. Schneider stated that since 1947 the intelligence agencies have taken on a life of their own, expanding in size and scope, and that "despite massive violations of rights and other illegal activities they have accomplished little that would argue for their continued existence";

--Commenting on the proposed charter itself, Mr. Schneider said S. 2525:

--appears to be based on a formula of prohibitions coupled with broad grants of executive discretion which equals the legitimizing of past abuses and the wholesale violation of constitutional rights;

--does not limit the authority to collect information (as may have been intended) but rather empowers the President to expand coverage of "national intelligence activities" thus opening the door to misuse of intelligence gathering capabilities;

--grants authority that goes beyond inquiries into the violation of criminal law or necessities of agency administration;

--contains broad conspiracy language that would continue abuses of the past in that groups could be targets of surveillance because they might in the future develop into a group capable of engaging in a criminal violation;

--contains guidelines regarding actions that the intelligence agencies may engage in that are remarkably vague and consists of grants of power that would allow the COINTELPRO to operate domestically and permit such activities as the overthrow of a Chilean government.

--Mr. Schneider concluded by conceding that "[r]ealism compels us to recognize that the AFSC remedy for intelligence agency abuse is a goal that may not be fully reached."

4. Ms. Taylor, representing the "Women Strike for Peace" made the following points:

--the charter should tighten prohibitions rather than create loopholes which legitimize violations;

--the bill as drafted appears to officially sanction abuses which the bill is supposed to eliminate;

--the bill makes no provision for expungement of records of groups or individuals under surveillance;

--Ms. Taylor objected to the "reasonable belief" standard, citing section 213 of S. 2525, as a vaguer standard for authorizing an investigation than the standard set up in the Fourth Amendment which requires "probable cause to believe" that a person has committed or is about to commit a crime;

--there is no reason for surveillance of Americans abroad unless it is for criminal investigations and under the direction of the Justice Department;

--S. 2525 is so broadly written and in such vague general language that it readily lends itself to "national security" interpretation so as to permit an intelligence entity to conduct almost any kind of activity it wishes; little comfort can be found in the statute's reliance on the Attorney General or his designees;

--Ms. Taylor concluded by saying that "Women Strike for Peace" is not suggesting that there be no intelligence activity in the U.S., but rather that such activity must come under constitutional control; in the opinion of "Women Strike for Peace," S. 2525 needs major revision to attain this goal.

5. Mr. Gutman, with particular reference to the abuses of the CIA as relate to the class action lawsuit he is involved in as plaintiff's counsel, made the following comments and recommendations:

--Domestic counterintelligence activities should not occur unless there is a reasonable suspicion, based on concrete evidence of a violation of the criminal statutes, including criminal espionage, criminal treason or criminal sabotage;

--The CIA could easily use section 221 of S. 2525 (background investigations) as a pretext to engage in domestic spying on an American citizen; the CIA should not engage in a background investigation of a potential recruit without first acquiring the individual's permission, which consent could easily be acquired without disclosing the details of the proposed operation;

--A provision should expressly provide for the destruction of all information currently in the CIA files without foreign intelligence value;

--Mr. Gutman concluded by stating that rather than prohibit the types of abuses made evident in his lawsuit, S. 2525 would legitimize them; he called for a major rewrite of S. 2525 to "ensure that the CIA's systematic abuses of human rights not reoccur" and stated that "S. 2525's failure to bar all covert operations" is a grave threat to the future security of the American people.

6. Questioning by Senator Garn took the form of the Senator expressing astonishment over what he considered an "overindictment" of the intelligence agencies by the witnesses. While strongly supporting the CIA and its employees and emphasizing the massive attempts by the Soviet Union at espionage within the U.S., Senator Garn said he found it incredible that anyone would recommend abolishing the CIA, thus leaving all U.S. citizens subject to KGB activities. Senator Garn accused the witnesses of the same form of extremism that resulted in the abuses of the past (e.g., by their broad condemnation of the entire intelligence community Senator Garn said the witnesses have condemned intelligence on the basis of "guilt by association.") Senator Garn stressed that the vast majority of CIA and FBI officials welcome guidelines, which, he said, might come as a surprise to the witnesses. In closing Senator Garn said that the sum total of the witnesses' testimony goes beyond permissiveness and would serve only to undermine legitimate intelligence activities.

7. Senator Bayh, during the questioning process, made the following points:

--Since the Ford Administration with Mr. Levi as Attorney General and continuing with the Carter-Bell team, intelligence agencies are operating in a different environment;

--While we must learn from the past, any effort at reform must strike a delicate balance which is a very difficult thing to do in the legislative process;

--Senator Bayh said that he senses a movement away from the need for charter legislation; he said he feels pressure to allow business to transpire as usual*; Senator Bayh said he would not accept this.

--Following up on his previous comment, Senator Bayh said that he is concerned that there is a movement afoot in the context of charter legislation that espouses the idea that the alternative to prudent legislation should be no legislation.

--In response to a question by one of the witnesses who asked if the Committee as a whole reflects Senator Garn's fear of a massive Soviet network in this country to the point that such fear would have a chilling effect on this legislation, Senator Bayh responded that there is a threat which must be dealt with firmly but without damage to the rights of U.S. citizens. Senator Bayh concluded by adding that foreign governments are doing things that we have not been able to find out how to constitutionally stop (Mr. Bayh did not elaborate).

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Assistant Legislative Counsel

*Note: Senator Bayh had spent the morning at the White House along with other congressional leaders summoned by the President to discuss intelligence matters.

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STATEMENT ON THE CIA AND FBI

The scandalous and unlawful activities of the Central Intelligence Agency and the Internal Security Division of the Federal Bureau of Investigation have shocked Americans to the point that serious and responsible voices are calling for them to be abolished.

The repeated violations of these agencies have so unmistakably compromised these two bodies that it is certain that they are beyond salvage as agencies in which Americans can confidently place their trust. Unless strong action is taken, there will always be the fear that they will again, under the cover of secrecy, resort to the kind of improper and illegal methods that have indelibly tarnished their names at home and abroad.

Believing in the Quaker ideal of an open society in which all are free to promote peace, equality and justice without fear, the American Friends Service Committee unhesitatingly adds its voice to those which say that the CIA and the Internal Security Division of the FBI must be abolished.

The elimination of the CIA and the Internal Security Division of the FBI will serve as an unmistakable warning to any successor agencies. But even so clear a warning is not enough. The practices which brought these two bodies into disrepute must be unequivocally ended, for the same methods committed by any successor agencies would be as intolerable as if they were undertaken by the CIA or FBI.

We reject and call on all others to reject clandestine U.S. activities abroad such as subverting governments by bribery and corruption, secret military action, assassinations and conspiracy.

At home we reject and call on all others to reject illegal wiretapping, mail interception, burglaries, cover-ups, surveillance and infiltration of lawful groups, use of agents provocateurs, investigations of dissent and dissenters used by the party in power against its opponents or critics, and the maintenance of political dossiers on citizens and groups exercising legitimate rights.

We urge that such practices by the CIA, the Internal Security Division of the FBI, and by the numerous other federal, civil and military intelligence agencies be outlawed and that all government attempts to preserve these functions in any form or under any agencies be prevented.

We recognize that, sometimes in league with federal agencies and sometimes independently, state and local police forces are engaged in some of these practices. They, too, must be stopped. The development and use of computerized information systems must not provide tools to a

secretive and autocratic police. We urge the Congress to investigate rigorously the dissemination of information gathered under such systems and to enact strict detailed guidelines to prevent abuse of data systems.

We urge our government to end the practice of classifying information in its possession as a device to hide its own agents' mistakes or violations of law. We call for a system of accountability which will require all public officials to refrain from lying and deception of the American public.

We insist that those in government service who detect such transgressions and make them public shall be protected -- indeed honored -- rather than harassed or treated as criminals.

As for foreign intelligence activities, we do not believe that there should be one standard for American citizens and another standard for others justifying American government actions abroad which we would not tolerate at home. To those who say we must fight fire with fire by engaging in reprehensible actions at home and abroad, because others will commit such actions against us, we reply that we are not ready passively to give up our ideals ourselves out of fear of what others may do.

In this imperfect world the U.S. government will undoubtedly continue to gather foreign intelligence. Congress must fulfill its constitutional obligation to oversee this activity by prohibiting the kinds of acts which have brought the intelligence community into disrepute and by providing sanctions against those who overstep the bounds of law and decency.

Approved by the AFSC Board of Directors, April 24, 1976